terms no longer extended to the United Kingdom as the Act had been repealed in the United Kingdom by the 1956 Act. It was only when the 1959 Extension Order was extended to Singapore that the United Kingdom once again became one of His Majesty's dominions to which the 1911 Act then extended. Mr. Lightman, for the respondents, submitted that Thean J. misconstrued and/or misunderstood the Seventh Schedule of the 1956 Act as Paragraphs 39(1), (2) and (3) applied to the construction of Paragraph 41 and made it retrospective to June 1, 1957 the date when the 1956 Act came into effect. It was argued that Paragraph 39 operates irrespective of any extension of any provision by any Order in Council, and of its terms and force extended to all countries to which the 1911 Act has been extended, that Paragraph 39 is integral with 41, being the statutory guide to the construction of Paragraph 41, and that a definition or construction clause must be implicitly incorporated in any extension of the substantive provision. We do not accept this argument. Paragraph 39 has never been extended to Singapore, and therefore never operated in Singapore. We agree with Thean J. that the extension of Paragraph 41 to Singapore did not automatically bring with it the operation of Paragraph 39. Sub-Paragraphs (2) and (3) of Paragraph 39 have the effect (in the law of the United Kingdom) of deeming the extension of a provision of the 1956 Act (*e.g.* Paragraph 41) to certain countries (*e.g.* Singapore) at a time when it is not so extended. Paragraph 39 therefore has the effect of preserving the operation of the 1911 Act at a certain point of time. In *Copyright Owners Reproduction Society Ltd.* v. *E.M.I.*,[5] Menzies J. at page 625 said that Paragraph 41 was intended to preserve the operation of the 1911 Act and therefore was more than an interpretation provision. We do not see any distinction between the intent of Paragraph 39(2) and (3) and that of modified Paragraph 41 except in point of time of their operational effect. If it was intended that Paragraph 41 should have retrospective effect, the 1959 Extension Order would have extended Paragraph 39(3) as well. Accordingly, we dismiss the plaintiffs' appeal on this decision.

STARE DECISIS

When submitting that Thean J. was wrong to have decided that he was bound by the principle of construction laid down in the *Wee Boon Chye* case, Mr. Walton also submitted that decisions of the Federal Court of Malaysia sitting in appeals from the High Court in Singapore are not binding on this Court on the ground that the Federal Court is no longer within the same system of courts in Singapore. We do not agree with this submission. In our view, the Court is bound by the decisions of the Federal Court sitting in appeals from the High Court of Singapore in the same way and to the same extent that it is bound by the decisions of the Court of Appeal of the Straits Settlements and for the same reason that the Court of Appeal in England is bound by the decisions of the former Exchequer Chamber: *Maine and New Brunswick Electrical Power Co* v. *Hart.*[6]

DECISION OF THIS COURT

For the reasons given above, we agree with Thean J. on both the main decision and the single period decision. The appeal and the cross appeal are both dismissed.

*Appeal and cross appeal dismissed.*

Solicitors: *Wee Swee Teow & Co; Allen & Gledhill.*

---

## AUSTRALIAN SHIPBUILDING INDUSTRIES (W.A.) PTY. LTD. v. ASSETS ABLE PTE. LTD. & ANOR.

**[O.C.J. (Thean J.) November 27, 1986]**
**[Singapore – Motion in Suit No. 4756 of 1986]**

*Copyright – Drawings and plans – Protection of – Claim for copyright in Specifications and Drawings first published in Australia in 1981 – Repeal of Copyright Act 1911 – Effect on work emanating from Australia after April 30, 1969 – Whether Specifications and Drawings have copyright in Singapore – Copyright Act (U.K.) 1911 – Copyright Act 1912 (Australia) – Copyright Act 1968 (Australia) – Copyright Act, 1956 (U.K.), s.31 – Copyright Act, 1956 (Transitional Extension) Order, 1959.*

The plaintiff was an Australian company which carried on the business of, among other things, shipbuilding. They claimed copyright in certain Specifications and Drawings of certain vessels by reason of their first publication in Australia in 1981 or thereabout. By a Notice of Motion dated August 29, 1986, the plaintiff applied for, *inter alia*, (i) an interim injunction restraining the defendants and each of them until after the trial of this action or until further order, whether by their officers, servants or agents or otherwise howsoever, from infringing and/or causing, enabling or assisting others to infringe the plaintiff's copy-

right and (ii) a mandatory injunction for delivery to the plaintiff's solicitors copies of the Specifications and Drawings and all other plans, working drawings and written information relating to those vessels that were in their possession, custody or control.

The issue before the court was whether the plaintiff had copyright in Singapore in the Specifications and Drawings under the Copyright Act 1911 of the United Kingdom as applied in Singapore.

**Held**: (1) upon the repeal of the 1911 Act by the legislature in Australia in 1969, Australia ceased to be a "dominion to which this Act extends" as stated in section 26(1) of the 1911 Act. Therefore the 1911 Act no longer extended to Australia;

(2) work emanating from Australia after April 30, 1969 did not enjoy any copyright protection. Hence the plaintiff did not have any copyright in the Specifications and Drawings under the 1911 Act in Singapore.

*Case referred to:*

(1) *Butterworth & Co. (Publishers) Ltd. & Ors.* v. *Ng Sui Nam* [1985] 1 M.L.J. 196.

MOTION SUIT.

*Mrs. Haq* (*A.K. Radakrishnan* with her) for the plaintiff.

*Vangat Ramayah* for the first and second defendants.

*Cur. Adv. Vult.*

**Thean J.**: By a Notice of Motion dated August 29, 1986, the plaintiff applied for (i) an interim injunction restraining the defendants and each of them until after the trial of this action or until further order, whether by their officers, servants or agents or otherwise howsoever, from infringing and/or causing, enabling or assisting others to infringe the plaintiff's copyright in a set of specifications and drawings relating to construction of certain fishing trawler vessels known as the "Success Class," and (ii) a mandatory injunction for delivery to the plaintiff's solicitors copies of the specifications and drawings and all other plans, working drawings and written information relating to those vessels that are in their possession, custody or control. In this application the plaintiff also applied for certain orders for discovery.

The plaintiff is an Australian company which carries on the business of, among other things, shipbuilding in the State of Western Australia and claims copyright in a set of specifications and drawings ("Specifications and Drawings") as more particularly described in the affidavit of its director and general manager, Mr. John Frederick Mason. The claim is based on the following:

(a) The Specifications and Drawings were prepared by the plaintiff's employees in Australia under contracts of service which did not exclude the generation of the provisions of section 5(1)(b) of the Copyright Act, 1911 of the United Kingdom.

(b) The first three dimensional reproductions from the literary works were made available to a purchaser in Australia in May 1981 and thereafter the plaintiff was in a position to build similar vessels given the fact that orders were subsequently received.

On the basis of the affidavits filed in support of the application and the Statement of Claim, it is clear that the plaintiff is claiming copyright in the Specifications and Drawings by reason of their first publication in Australia in 1981 or thereabout; there is no dispute as to the date of their publication in Australia, *i.e.* in 1981 or thereabout. There is certainly no evidence or even suggestion that they were published prior to May 1, 1969; this date is material as will be seen shortly. There is also no dispute that the Specifications and Drawings are literary works within the meaning as provided in the Copyright Act, 1911 of the United Kingdom. What is in dispute is whether the plaintiff has copyright in Singapore in the Specifications and Drawings under that Act as applied in Singapore. The main arguments of both parties have centred on this point, which if it is resolved against the plaintiff, would suffice to dispose of the application.

It is common ground that the Copyright Act, 1911 of the United Kingdom ("the 1911 Act") applies in Singapore, and under section 1(1) thereof copyright subsists in certain works, published works as well as unpublished works. Section 1(1) of the 1911 Act provides:

"1.–(1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if –

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid, and

(b) in the case of unpublished work, the author was at the date of the making of the work a British subject or

resident within such parts of His Majesty's dominions as aforesaid; but in no other works, except so far as the protection conferred by this Act is extended by orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries."

The crucial words in this subsection for the purpose of this application are "the parts of His Majesty's dominions to which this Act extends."

At the time when the 1911 Act was passed by the Parliament of the United Kingdom it did not extend to Australia by reason of section 25(1) thereof. Section 25(1) provides as follows:

"25–(1) This Act, except such of the provisions thereof are are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature."

The term "self-governing dominion" is expressly defined in section 35(1) of the Act to mean "the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and Newfoundland." However, in 1912 Australia passed its Copyright Act and by section 8 thereof adopted the 1911 Act with effect as from July 1, 1912. Section 8 thereof provides:

"8. The British Copyright Act, a copy of which is set out in the Schedule to this Act, shall, subject to any modifications provided by this Act, be in force in the Commonwealth, and shall be deemed to have been in force therein as from the first day of July, One thousand nine hundred and twelve."

Then in 1968 Australia enacted the Copyright Act, 1968 and by section 6 thereof repealed the Copyright Act, 1912. In effect, the 1911 Act as previously adopted by the Copyright Act, 1912 was repealed by the Australian Copyright Act, 1968. The Copyright Act, 1968 came into force in Australia on May 1, 1969. It is therefore clear that during the period from July 1, 1912 to April 30, 1969, the 1911 Act extended to Australia, and Australia was part of "His Majesty's dominions" to which the 1911 Act extended. What is not clear is the effect of the repeal in Australia in 1969 of the Australian Copyright Act, 1912, and the question is whether since the repeal Australia has ceased to be one of the countries geographically falling within the area termed "His Majesty's dominions" to which the 1911 Act extends.

This point, in my view, is resolved by section 26(1) of the 1911 Act which provides:

"26–(1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends."

It seems to me clear that upon the repeal of the 1911 Act by the legislature in Australia in 1969, Australia ceased to be a "dominion to which this Act extends." It therefore follows that the 1911 Act no longer extends to Australia. If this is correct, as I think it is, it further follows that work emanating from Australia after April 30, 1969 does not enjoy any copyright protection. Hence, in this case the plaintiff has no copyright in the Specifications and Drawings under the 1911 Act.

There is one further point to be considered and it arises in this way. The 1911 Act was passed by the Parliament of the United Kingdom and by virtue of section 25(1) thereof was extended throughout the British dominions except the self-governing dominions as defined in section 35(1). At that time Singapore was part of the Straits Settlements, a British possession and the Governor of the Straits Settlements on July 1, 1912 made a proclamation pursuant to section 37(2)(d) of the 1911 Act, thus extending the Act to Singapore as from that day. Then in 1956, the United Kingdom passed the Copyright Act which, *inter alia*, repealed the 1911 Act (except sections 15, 34 and 37 thereof). No part of the 1956 Act, however, was extended to Singapore; and as of the date of its repeal the 1911 Act ceased to apply to the United Kingdom. Therefore, after the repeal, the United Kingdom was no longer an area to which the 1911 Act extended and consequently, all works falling within paragraph (a) or (b) of section 1(1) of the 1911 Act were no longer afforded copyright protection. This position was not rectified until June 26, 1959 when an Order in Council of the United Kingdom called the Copyright Act, 1956 (Transitional Extension) Order, 1959 was made. That Order made pursuant to section 31 of the Copyright Act, 1956 modified and extended paragraph 41 of the Seventh Schedule to the Act. Paragraph 41 as modified and extended ("Paragraph 41") reads as follows:

"In so far as the Act of 1911 or any Order in Council made thereunder forms part of the law of any country other than the United Kingdom, at a time after that Act has been wholly or partly repealed in the law of the United Kingdom or of any other country to which the Act extended or which, by virtue of that Act, was to be treated as a country to which it extended, it shall, so long as it forms part of the law of the country first mentioned, be construed and have effect as if that Act had not been so repealed."

The question now arises is how is the 1911 Act to be construed in relation to Australia in view of the express provision of section 26(1) thereof. Paragraph 41 was enacted to rectify an omission created by the repeal in the United Kingdom of 1911 Act by the Copyright Act, 1956. After the repeal, the United Kingdom was not an area to which the 1911 Act extended. As I said in *Butterworth & Co. (Publishers) Ltd. & Ors.* v. *Ng Sui Nam,*[1] after the repeal there was an interregnum, between June 1, 1957 and June 26, 1959, in which construing the 1911 Act in Singapore all works falling within paragraphs (a) and (b) of section 1 of the 1911 Act emanating from the United Kingdom did not enjoy copyright protection. In the case of Australia, however, there was no such lacuna; upon the repeal of the 1911 Act by the Australian legislature, Australia by reason of section 26(1) ceased to be "a dominion to which the Act extends." The meaning of Paragraph 41 is clear to me: where the 1911 Act has been repealed in the law of a country to which the Act extended, the 1911 Act as applied in Singapore is to be construed and have effect as if the Act had not been so repealed in that country. However, such a construction surely cannot be maintained where the Act itself expressly states that upon such repeal that country shall cease to be a "dominion to which the Act extends." Paragraph 41, in my view, cannot be invoked to construe the 1911 Act so as to nullify an express provision contained in the Act itself.

Mrs. Haq on behalf of the plaintiff seeks to overcome the operation of section 26(1) of the 1911 Act in two ways. First, she submits that the crucial words in section 26 of the 1911 Act are: "to which the Act extends," and she seems to construe these words to mean: "to which the Act was extended by the United Kingdom Parliament." In her submission section 26(1) only applies to self-governing dominions to which the 1911 Act was extended directly by the United Kingdom Parliament. Australia is not a dominion to which the Act was extended by the Parliament of the United Kingdom. Australia passed its Copyright Act in 1912 and by section 8 thereof adopted the 1911 Act: that section said that the 1911 Act was deemed to be in force in Australia as from July 1, 1912. I am unable to accept this argument. Under section 25(1), the 1911 Act extends to a self-governing dominion if declared by the legislature of that self-governing dominion to be in force there. Australia did by the Copyright Act, 1912 declare the 1911 Act to be in force in Australia and hence the 1911 Act was extended to Australia by its own legislature: see note (q) on p. 393 of Volume 8 of *Halsbury's Laws of England* (3rd edn.). It would be straining the language of section 26(1) to construe the word "extend" to mean "was extended by the Parliament of the United Kingdom."

Secondly, Mrs. Haq argues that if section 26(1) is construed as applicable to Australia, then upon the repeal of the 1911 Act in Australia in 1968 it ceased to apply in Australia but for the purpose of construing 1911 Act in other parts of "His Majesty's dominions" in which the 1911 Act is still in force, Australia is to be treated as if it were a dominion to which the 1911 Act extends. Hence, in Singapore the 1911 Act is to be construed as if the 1911 Act had not been repealed in Australia and Australia is to be treated still as a dominion to which the Act extends. Such an argument, I find, is again unacceptable. The words in section 26(1) are clear and there is no ambiguity or doubt whatsoever. It provides that upon repeal of the 1911 Act by the legislature in a self-governing dominion "that dominion shall cease to be a dominion to which the Act extends." The 1911 Act is part of the domestic law of Singapore and construing it in Singapore, in view of the express provisions in section 26(1), it is not possible to treat the 1911 Act as if it had not been repealed in Australia. To do so would run counter to section 26(1) of the Act.

Accordingly, I hold that the plaintiff, on the material before me, does not have any copyright on the Specifications and Drawings and has no claim against the defendants for an infringement of copyright. In the result, I dismiss the application with costs.

*Application dismissed.*

Solicitors: *Drew & Napier; Wee, Ramayah & Partners.*